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\*\*I

## REPORT

of the Committee on Legal Affairs and Citizens' Rights

on the proposal from the Commission to the Council for a directive on prevention of use of the financial system for the purpose of money laundering  
(COM(90) 106 final - C3-0111/90 - SYN 254)

Rapporteur : Mr Geoffrey HOON

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A Series: Reports - B Series: Motions for Resolutions, Oral Questions - C Series: Documents received from other Institutions (e.g. Consultations)

\* = Consultation procedure requiring a single reading

\*\*II = Cooperation procedure (second reading) which requires the votes of a majority of the current Members of Parliament for rejection or amendment

\*\*I = Cooperation procedure (first reading)

\*\*\* = Parliamentary assent which requires the votes of a majority of the current Members of Parliament

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By letter of 6 April 1990 the President of the Council consulted the European Parliament on the proposal from the Commission for a Council directive on prevention of use of the financial system for the purpose of money laundering (OJ No.106, 28.4.1990, p. 6).

On 14 May 1990, the European Parliament referred this proposal to the Committee on Legal Affairs and Citizens' Rights as the Committee responsible and to the Committee on Economic and Monetary Affairs and Industrial Policy for its opinion.

On 23 May 1990 the Committee on Legal Affairs and Citizens' Rights appointed Mr Geoffrey HOON rapporteur.

The Committee on Legal Affairs and Citizens' Rights considered the proposal for a directive and the draft report at its meetings of 18/19 September 1990, 15/16 October 1990 and 30/31 October 1990.

At the last meeting, the Committee on Legal Affairs and Citizens' Rights adopted the draft legislative resolution unanimously.

The following took part in the vote: STAUFFENBERG, chairman; ROTHLEY, vice-chairman; HOON, rapporteur; ANASTASSOPOULOS, CABANILLAS GALLAS, COONEY, DE DONNEA (for DE GUCHT), ELLIOTT, FALCONER, FONTAINE, GARCIA AMIGO, GRUND, JANSSEN VAN RAAY, MALANGRE, MEBRAK-ZAIDI, SALEMA, SCHLECHTER, B. SIMPSON (for ODDY), VALENT, WIJSENBEEK (Rule 124.(4)) and ZAVVOS.

The opinion of the Committee on Economic and Monetary Affairs and Industrial Policy is attached.

The report was tabled with Sessional Services on 5 November 1990.

The deadline for tabling amendments is 12 noon on Thursday, 15 November 1990.

A

AMENDMENTS

Commission proposal for a Council directive on prevention of use of the financial system for the purpose of money laundering

Commission text<sup>1</sup>

First Citation

Having regard to the Treaty establishing the European Economic Community, and in particular Article 57(2), third sentence, thereof,

Amended text

(Amendment No. 1)

First Citation

Having regard to the Treaty establishing the European Economic Community and in particular Article 57(2) first and third sentence, thereof,

(Amendment No. 2)

Sixth recital a (new)

Whereas, in the international context, the free movement of capital may constitute a risk if third countries do not apply comparable standards; whereas therefore the Commission must monitor the situation in third countries and reveal the identity of those countries applying inadequate standards in order to draw the attention of credit and financial institutions in the Community to the risk of dealing in financial transactions with similar institutions from those countries;

<sup>1</sup> For full text see OJ No. C 106, 28.4. 1990, p. 6

(Amendment No. 3)

Thirteenth recital

Whereas preserving the financial system from money laundering is a task which cannot be carried out by the judicial and law enforcement authorities without the cooperation of credit and financial institutions and their supervisory authorities; whereas banking secrecy must be lifted in criminal cases; whereas a mandatory system of reporting suspicious transactions is the most effective way to accomplish such cooperation; whereas a special protection clause is necessary to exempt employees and directors from responsibility by breaching restrictions on disclosure of information;

Whereas preserving the financial system from money laundering is a task which cannot be carried out by the judicial and law enforcement authorities without the cooperation of credit and financial institutions and their supervisory authorities; whereas banking secrecy must be lifted in criminal cases; whereas a mandatory system of reporting suspicious transactions is the most effective way to accomplish such cooperation; whereas a special protection clause is necessary to exempt institutions, their employees and their directors from responsibility by breaching restrictions on disclosure of information;

(Amendment No. 4)

Thirteenth recital a (new)

Whereas reporting to the authorities must be confined to inquiries concerning money laundering only;

(Amendment No. 5)

Fourteenth recital a (new)

Whereas institutions failing to discharge the duties laid down in this Directive must be penalized by the supervisory authorities concerned;

(Amendment No. 6)

Article 1, fifth definition

- 'serious crime' means a crime specified in Article 3 paragraph 1 (a) and (c) of the Vienna Convention, terrorism and any other serious criminal offence (including in particular organized crime), whether or not connected with drugs, as defined by the Member States.

- 'serious crime' means a crime specified in Article 3 paragraph 1 (a) and (c) of the Vienna Convention, terrorism, organized crime, illicit arms trading, counterfeiting, traffic in persons, the exploitation of the prostitution of others, kidnapping and hostage taking, as defined by the Member States.

(Amendment No. 7)

Article 1, add new seventh definition

- 'international funds transfers' means any instruction given by a sender, or his agent, to a receiving natural or legal person, transmitted orally, electronically or in writing to pay or cause another natural or legal person to pay a fixed or determinable amount of money to a beneficiary, or to his agent, from one national jurisdiction to another, either within or outside the jurisdiction of the European Community.

(Amendment No. 8)

Article 3

Member States shall ensure that credit and financial institutions require identification of their customers when entering into business relations or conducting transactions, and in the case of doubt whether customers are acting on their own behalf, that these institutions take reasonable measures to establish the real identity of the persons on whose behalf a transaction is carried out or an account is opened. Credit and financial institutions shall keep records of the identity documents required until at least five years after relations with their clients have ended.

1. Member States shall ensure that credit and financial institutions require identification of their customers when entering into business relations or conducting transactions, and in the case of doubt whether customers are acting on their own behalf, that these institutions take reasonable measures to establish the real identity of the persons on whose behalf a transaction is carried out or an account is opened.

2. Where credit and financial institutions act for other such institutions and it is impossible for the former to establish the identity of the persons on whose behalf the latter institutions are acting as principals, because of normal practice and the specific nature of the operations concerned, it shall be for the latter to take reasonable steps to ascertain the real identity of the persons on whose behalf they are acting.

3. Credit and financial institutions shall keep records of the identity documents required until at least five years after relations with their clients have ended or until at least ten years thereafter in the case of intermittent transactions outside the scope of an uninterrupted contractual relationship.

4. All natural and legal persons involved in effecting international funds transfers shall be required to maintain in electronic or paper form records of:

(i) the identity of the beneficiary of the funds transfer, the account number, if any, of the beneficiary and the identity of the agent, if any, acting on behalf of the beneficiary and

(ii) the identity of the sender of the funds transfer, the account number, if any, of the sender and the identity of the agent, if any, acting on behalf of the sender,

for a period of at least five years.

5. The European Commission and/or the competent national authorities may, in appropriate circumstances, order that natural and legal persons involved in international funds transfers should suspend such transfers to specified third countries. Such an order would be appropriate where, after monitoring the legal situation in third countries, the European Commission and/or the competent national authorities conclude that the specified third country has failed to enact and/or apply adequate standards designed to eliminate money laundering and that it is satisfied as a result that the jurisdiction of the specified third country is regularly used for the purpose of money laundering.

(Amendment No. 9)

Article 4

Member States shall ensure that credit and financial institutions examine with special attention any unusual transaction not having an apparant economic or visible lawful purpose, and that such institutions refrain from entering into any transaction which they have reason to suspect may have any relation to money laundering.

Member States shall ensure that all natural and legal persons, including credit and financial institutions, examine with special attention any unusual transaction and/or any transaction not having an apparant economic or visible lawful purpose, and that all such natural and legal persons should be under an obligation to report to the competent authorities the details of any transaction which they have reason to suspect may have any relation to money laundering.

(Amendment No. 10)

Article 4a (new)

Any transaction or agreement prohibited pursuant to this Directive shall be automatically void.

(Amendment No. 11)

Article 5

Member States shall ensure:

1. That credit and financial institutions and their directors and employees cooperate fully with the relevant judicial or law enforcement authorities competent for criminal matters:  
- by informing these authorities, on their own initiative, of any facts they discover which could be related to a money laundering offence;  
- by furnishing these authorities with all information requested in the case of any criminal inquiry or rogatory commission on money laundering carried out according to the applicable legislation.

Member States shall ensure:

1. That credit and financial institutions and their directors cooperate fully with the relevant judicial or law enforcement authorities competent for criminal matters:  
- by informing these authorities, on their own initiative, of any facts they discover which could be related to a money laundering offence;  
- by furnishing these authorities with all information requested in the case of any criminal inquiry or rogatory commission on money laundering carried out according to the applicable legislation.



2. That the disclosure in good faith to the relevant judicial or law enforcement authorities competent for criminal matters by any employee or director of a credit or financial institution of any suspicion or belief that an operation is aimed at or connected to money laundering, shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve for such employees and directors any civil or penal responsibility of any kind.

2. That the disclosure in good faith to the relevant judicial or law enforcement authorities competent for criminal matters by any employee or director of a credit or financial institution of any suspicion or belief that an operation is aimed at or connected to money laundering, shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve for such employees, directors or institutions any civil or penal responsibility of any kind.

3. That, where injury is directly caused as a result of an inaccurate statement made in good faith, the State shall accept liability in respect of that injury.

4. That information supplied to the authorities in accordance with paragraph 1 may be used only in connection with preliminary judicial inquiries into serious crimes within the meaning of this Directive.

(Amendment No. 12)

#### Article 6

Member States shall ensure that if, in the course of inspections carried out in credit or financial institutions by the competent authorities, or in any other way, these authorities discover facts that could constitute evidence of money laundering, they inform the relevant judicial or law enforcement authorities competent for criminal matters.

Member States shall ensure that if, in the course of inspections carried out in credit or financial institutions by the competent authorities, or in any other way, these authorities discover facts that could constitute evidence of money laundering, they inform the relevant judicial or law enforcement authorities competent for criminal matters. Member States shall further ensure that the supervisory authorities provide each other with the information relevant to them.

(Amendment No. 13)

Article 7(2)

Member States shall ensure:

2. That credit and financial institutions take the appropriate measures so that their employees are aware of the provisions contained in this Directive, and that they also establish special training programmes for their employees, to help them detect operations which may be related with money laundering as well as to instruct them as to how to proceed in such cases.

Member States shall ensure:

2. That credit and financial institutions take the appropriate measures so that their employees are aware of the provisions contained in this Directive, including participating in special training programmes for their employees, to help them detect operations which may be related with money laundering as well as to instruct them as to how to proceed in such cases.

(Amendment No. 14)

Article 8

Deleted

Member States shall extend the provisions of this Directive, where applicable, to professions and undertakings, other than credit and financial institutions, which because of their involvement with cash transaction business, may be particularly susceptible to being used for money laundering purposes.

(Amendment No. 15)

Article 8a (new)

The competent authorities designated by the Member States shall apply administrative penalties to institutions failing to discharge the duties laid down in this Directive.

(Amendment No. 16)

Article 8b (new)

1. Member States shall ensure that proceeds from serious crime or property obtained by means of these proceeds shall be subject to confiscation.

2. Member States shall ensure the availability of necessary provisional measures, such as freezing or seizing, to prevent any dealing in, transfer or disposal of property which, at a later stage, may be subject of a request for confiscation.

(Amendment No. 17)

Article 9a (new)

The Commission shall, one year after 1 January 1992 and at three yearly intervals thereafter, draw up a report on the application of this Directive and submit it to the European Parliament and the Council.

DRAFT LEGISLATIVE RESOLUTION

embodying the opinion of the European Parliament  
on the proposal from the Commission to the Council  
for a directive on prevention of use of the financial  
system for the purpose of money laundering

The European Parliament,

- having regard to the proposal from the Commission to the Council (COM (90) 106 final - SYN 254)<sup>1</sup>,
  - having been consulted by the Council pursuant to Article 149(2) of the EEC Treaty (Doc. C3-0111/90),
  - having regard to the report of the Committee on Legal Affairs and Citizens' Rights and the opinion of the Committee on Economic and Monetary Affairs and Industrial Policy (Doc. A3-0273/90),
1. Approves the Commission proposal subject to Parliament's amendments and in accordance with the vote thereon;
  2. Calls on the Commission to amend its proposal accordingly pursuant to Article 149(3) of the EEC Treaty;
  3. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
  4. Calls on the Council to incorporate Parliament's amendments in the common position that it adopts in accordance with Article 149(2)(a) of the EEC Treaty;
  5. Instructs its President to forward this opinion to the Council and Commission.

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<sup>1</sup>OJ No. C 106, 28.4.1990, p. 6

## B

### EXPLANATORY STATEMENT

#### 1. Introduction

The Commission has introduced a proposal for a Council directive on the prevention of money laundering. This proposal comes 10 years after the 1980 Recommendation of the Committee of Ministers of the Council of Europe on measures against the transfer and safekeeping of funds of a criminal origin. More recently we have seen the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, adopted on 19 December 1988 in Vienna (the Vienna Convention), the reports of the banking supervisory authorities of the Group of Ten, of the "International Financial Action Group" (GAFI or IFAG) and of the European Committee on Crime Problems (CDPC).

Laundering of proceeds from criminal activities is a national and international phenomenon, covering both small and large amounts of money. In fact the problem has always existed: a large number of criminal categories may be involved (e.g. all kinds of illicit trade, theft, robbery etc.). This is especially the case for organised crime.

Preventing the use of proceeds from these criminal activities could therefore be very advantageous in preventing crime.

To prevent the use of proceeds from criminal activities, national and international measures are needed. These measures should not only be effective in combating crime but should not distort the normal circulation of money.

#### 2. Main items of the Commission proposal

The Commission of the European Communities proposes the following measures:

- a. Criminalizing money laundering (Article 2)
- b. Identification of customers and beneficial owners (Article 3)
- c. Due diligence of credit and financial institution (Article 4)
- d. Cooperation between financial institutions and authorities (Articles 5)
- e. Cooperation between financial supervisors and authorities (Article 6)
- f. Procedures of internal control and training programs by financial institutions (Article 7)

Member States must take the necessary measures by 1 January 1992 at the latest. The legal act proposed is a Council directive based on Article 57(2), third sentence of the EEC-Treaty. Article 57(2), first and third sentences were used as a legal basis for the second banking directive (OJ No. L381, 30.12.1989, p. 1) and are thus appropriate for this proposal, which guarantees equal conditions throughout the Community. An amendment has been proposed to add the first sentence to the proposed legal basis. The cooperation procedure follows from the proposed legal basis.

### 3. The extent of money laundering

Estimates as to the amounts laundered vary between 120 and 500 billion dollars (the former considered to be the most realistic figure) per year have been mentioned for drug dealing in the industrialised world, an amount which, according to the United Nations, exceeds that of the international oil trade and comes close to the turnover in arms trading. It is also estimated that about 50 to 70% of proceeds from drug dealing could be made available for laundering and for investment in apparently otherwise legitimate business. Money laundering must be a profitable business: the owner of the proceeds cannot use the money in his own place or country and is willing to invest it elsewhere. The GAFI report mentions as a price for money laundering a percentage of 6-8% of the amounts laundered.

The proposal from the Commission not only aims to combat the use of the profit from the production and sales of drugs, but also other serious crime as defined by the Member States. Thus the amounts involved will be substantially higher. The definition of serious crime, taken from Article 3, paragraph 1 (a) and (c) of the Vienna Convention, with the addition of terrorism and any other serious criminal offence (including in particular organised crime) is very specific with regard to drugs proceeds, but very vague in connection with other crime. This should be more specific, with the further addition of kidnapping and the illegal arms trade, robbery and extortion.

### 4. Relation between the proposal for a directive and other initiatives

The Recommendation (No. R(80)10) of the Committee of Ministers of the Council of Europe on measures against the transfer and safekeeping of funds of criminal origin has not resulted in all Member States of the Council of Europe adopting the legislation against money laundering. Of the EC Member States only France, Luxembourg and the United Kingdom have adopted specific legislation in respect of money laundering. Belgium, the Federal Republic of Germany and Italy are preparing such legislation. The Recommendation itself dates from 1980 and is relatively simple. It asks for identity checks, cooperation and checks on banknotes used in connection with criminal offences.

The Vienna Convention against illicit traffic in narcotic drugs and psychotropic substances, of 19 December 1988, has still to be ratified. It is very detailed and covers, for example, the problem of jurisdiction, confiscation, extradition, mutual legal assistance, transfer of proceedings, cooperation and training, illicit traffic and free trade zones. The definition of serious crime which is used in the draft directive refers to the definitions in this Convention.

The draft Convention elaborated by the Council of Europe's Select Committee of Experts on International cooperation in respect of search, seizure and confiscation of proceeds from crime contains 48 articles on the subject. The Commission proposal does not include measures to allow confiscation, which aspect will be dealt with later.

The GAFI Recommendations aim at: 1. the identification of clients and conservation of documents; 2. increased diligence on the part of financial institutions to give special attention to all complex unusual and important transactions; immediately make known their suspicions to the competent authorities; establish means of fighting against laundering capital,

especially by internal controls; 3. asking banks to implement recommendations of the IFAG to branches and foreign subsidiaries; 4. checking physical transport of funds to borders without restricting the freedom of capital movement within the Community; 5. establishing a system by which the banks would send to a central national bank all transactions above a certain amount; 6. reducing cash settlement.

These initiatives, which set out to deprive people engaged in crime of the proceeds of their criminal activities and thereby to eliminate their main incentive, are more detailed in their definitions and directed to more countries than the draft directive.

It could seem that, given the existence of the Vienna Convention and the draft Council of Europe Convention, the draft directive might be thought superfluous. However this is not so for three reasons:

- a. not all Member States currently have legislation on money laundering;
- b. it is necessary to avoid the distortion of competition between the banking sectors of the Member States (every measure concerning the surveillance of money laundering constitutes an administrative burden, which should be shared equally by all banks);
- c. it marks the European Community's determination to maintain free movement of capital and freedom to supply financial services, while preventing money launderers from taking undue advantage of weaknesses in the legislation in one or more Member State.

Attention should be drawn to the fact that there are a number of groups working on police cooperation (TREVI), the fight against drug addiction and the production, distribution and illegal trade in narcotics (High-level Coordinators' Group or CELAD), all reporting to the Council, in which the Commission sometimes takes part, but which never report to the European Parliament. It seems necessary that at least the Commission informs the Parliament about the negotiations, thus providing the information on which the Parliament can take action, if this should prove necessary.

#### 4. Description of money laundering

The Commission defines money laundering as:

- the conversion or transfer of property, knowing that such property is derived from serious crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in committing such an offence or offences to evade the legal consequences of his action, and
- the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from serious crime.

A simple transaction involving money laundering consists of: payment into a bank account at a bank near where the crime was committed ("the placement"), then a transfer of the money to another bank and finally use of the money ("integration") at a place where the perpetrator of the crime cannot be

distinguished from other people, and where the source of his wealth is not known, thus providing an "honest appearance".

Money can, for example, be divided in small sums that do not attract attention. There may also be active cooperation within credit and financial institutions with examples within banks of false documents being created to present to the authorities.

It should be noted that there are more complex methods of placement, the ensuing "modification" and integration. In fact, a large number of transactions are used to efface any connection between placement and integration. The Annex to the GAFI-report analyses 34 different money laundering procedures for placement, the ensuing "modification" of the nature of the fund, and integration. One method by which this can be achieved involves switching funds in other currencies through money broking firms, so that the proceeds can be invested in other currencies without any trace of their illegal origin.

However, the imagination of money launderers goes still further: the profits can be invested for example in a property investment company in the State where the profit is made, which can then in turn invest in property in other countries. The buying and selling of shares combined with their transfer to other States, false international loan agreements, physical export of gold or other commodities may also occur. One of the most difficult money laundering procedures to detect consists in a combination of legal importing and exporting of a variety of goods: in this way the proceeds can be exported and the profits of serious crime will seem to be profits of a profitable international import-export company.

These examples show that the definition proposed by the Commission (which is the same definition used in Article 6, paragraph 1, a and b of the draft Convention of the Select Committee of the Council of Europe) covers the money laundering process itself, but it must be said that its detection in its different manifestations will be very difficult. The secrecy and complexity of transactions require frequently the cooperation of lawyers and accountants. Further, unofficial financial institutions such as money broking firms, investment companies and so on have in some cases cooperated in the past with money laundering businesses. Although Article 2 makes money laundering a criminal offence for all people and bodies involved, this does not seem sufficient.

##### 5. What does the Commission propose in the event of suspected money-laundering transactions?

The Commission proposes that:

- (a) money laundering shall be treated as a criminal offence (Article 2)
- (b) credit and financial institutions must refrain from carrying out such a transaction (Article 4)
- (c) the authorities have to be informed (Article 5).

The proposed directive is silent on confiscation and on provisional measures. It is proposed that all Member States should be obliged to take such measures, since they constitute a serious deterrent both to those who commit serious offences and to those who "launder" the proceeds of crime. It is particularly



these aspects of confiscation and criminal liability, which will lead to equal competitive conditions between banks in all Member States.

## 6. Conclusions

1. It is recommended to approve the draft directive subject to the amendments proposed.
2. The European Parliament must be informed about the activities of all the working groups in the field of drugs and money laundering, in which the Commission participates and which report to the Council.
3. Since the directive gives considerable scope to the Member States in respect of its implementation, it is necessary that the European Parliament be kept informed about the implementation and operation of the directive (cf. Amendment No. 17).

OPINION

(Rule 120 of the Rules of Procedure)

of the Committee on Economic and Monetary Affairs and Industrial Policy  
for the Committee on Legal Affairs and Citizens' Rights

Draftsman: Mr de DONNEA

At its meeting of 18 June 1990 the Committee on Economic and Monetary Affairs and Industrial Policy appointed Mr de DONNEA draftsman.

At its meetings of 19-21 September 1990, 15/16 October 1990 and 29/30 October 1990 it considered the draft opinion. At the last meeting it adopted the conclusions.

The following took part in the vote: Beumer, Chairman; Desmond, vice-chairman; de Montesquiou, vice-chairman; Fuchs, vice-chairman; de Donnea, draftsman; Barton, Beazley, Bofill Abeilhe, Cassidy, Colom i Naval, Cravinho, Donnelly, Ernst de la Graete, Herman, Hoff, Lulling, Metten, Patterson, Pinxten, Read, Roumeliotis, Seal, Siso Cruellas, Speciale, von Wogau and Cooney (for Gallenzi), Falconer (for Christiansen), Martinez (for Megret), Porto (for Visenti) and Turner (for Stevens pursuant to Rule 111(2)).

The proposal for a directive is one of a series of measures taken at international (United Nations Convention against Illicit Traffic in Narcotic Drugs, adopted in Vienna on 19 December 1988; Council of Europe Recommendation of 27 June 1980; Financial Action Task Force against Money Laundering established in July 1989 at the G7 Summit in Paris) and at national level to combat the laundering of the proceeds of crime.

Money laundering can mainly be combated by means of the criminal law and via international cooperation among judicial and law enforcement authorities. However, this is not the sole strategy. Thus, the proposal covers the preventive role to be played by the financial system in the combating of money laundering, particularly as such activities may undermine the soundness, stability and prestige of the financial system as a whole. Finally, were the Community to take no action against money laundering, Member States might adopt measures incompatible with the completion of the single market.

## I. SUBSTANCE OF THE PROPOSAL

### 1. Scope of the directive

The proposal covers not only banks but all types of credit and financial institution, including insurance companies. In addition, Member States will be able to extend the scope of the directive to cover professions and undertakings other than credit institutions likely to be used for money-laundering purposes, e.g. casinos and exchange brokers.

The definition of money laundering corresponds to that laid down in the Vienna Convention. It covers the laundering of the proceeds of criminal offences connected with drug trafficking, terrorism and all other serious crimes.

The criminalization of money laundering by the Member States (Article 2) is a prerequisite for cooperation between financial institutions and judicial and law enforcement authorities. In most Member States, banking secrecy is lifted in connection with criminal offences.

### 2. Means of preventing and combating money laundering

#### (a) The obligation to identify customers

The first measure set out in the directive concerns the identification of customers. Article 3 stipulates that financial institutions shall require their customers to give proof of identity and, in cases of doubt, shall take 'reasonable measures' to establish the real identity of the persons on whose behalf a transaction is carried out. These institutions are required to keep records of customers' identity documents for at least five years after relations with them have ended.

#### (b) Cooperation with the judicial and law enforcement authorities

This cooperation essentially requires financial institutions to:

- inform the competent authorities of any fact they discover which might be connected with money-laundering;
- provide these authorities with all the information requested.

With a view to facilitating this cooperation, financial institutions are to establish internal control procedures to detect money-laundering operations and introduce special training programmes for their employees, who are to be given guarantees that the disclosure in good faith to the judicial authorities of transactions connected with money laundering will not entail any civil or criminal liability for them.

The directive should come into force on 1 January 1992.

## II. ASSESSMENT

### 1. The need to mobilize the financial system

According to the various calculation methods employed (on the basis of world production, drug addicts' needs or the volume of drugs seized), sales of illegal drugs could amount to US\$ 122 billion per year in the United States and Europe, of which US\$ 85 bn per year could be available for laundering.

These very considerable sums are laundered through complex circuits (investment with credit institutions; conversion into different forms of assets, reinjection into the economy). However, it is the investment of sums held in cash which is the weakest link in the money-laundering chain. At this stage, it is still possible to detect the illegal nature of the operation. Subsequently, it becomes more and more difficult to unravel the complicated series of conversions through which the sums concerned have passed, particularly due to the speed of electronic capital transfers, the use of false documents and front companies.

Given the damage caused by drugs and the banking risks, there is a need to mobilize the entire financial system to aid the law enforcement authorities in the fight against money laundering.

### 2. Improving the mechanism

The mechanism set out in the proposal for a directive should be improved in various respects in order to make it as effective as possible. The cost of its introduction and the constraints which it imposes on financial institutions can be justified only if it represents a credible deterrent.

#### - Legal basis

The proposal for a directive deals with the operating conditions of financial institutions, and is therefore based on Article 57(2) of the EEC Treaty.

However, the proposal for a directive also seeks to approximate the laws of the Member States in the sphere of criminal law and procedure.

Under the terms of the proposal, Member States will be required to incorporate into national law the definition of a criminal offence (Article 2) and an obligation, under criminal procedure, to inform the

authorities of any facts which could constitute evidence of this offence.

The legal basis should therefore also refer to Article 100a which deals with the approximation of the laws of the Member States concerning the establishment and the operation of the single market and, in particular, the free movement of capital.

- Scope

A prerequisite for the smooth functioning of the mechanism covering the identification of customers and cooperation between the authorities and banks is the recognition by all the Member States of a common definition of money laundering. This uniform criminalization is the key to the mechanism.

In this connection, the concept of a 'serious crime' (Articles 1 and 2) is not sufficiently precise. Differences in interpretation from one country to another would be incompatible with the notion of a single market. Given the difficulty of establishing a precise definition of serious crime, one solution would be to refer to the crimes defined in the international conventions and agreements listed in the annex to the proposal for a directive. By the same token, the system will function effectively only if all the Member States agree to lift banking secrecy when the serious crimes in question are detected. Finally, so that laundered money cannot benefit from the facilities offered by financial agents or institutions other than those defined in Article 1, the Member States must make the provisions of the directive binding, by adapting them if necessary, on all professions and undertakings other than credit and financial institutions (Article 8) which act as financial brokers, introducing arrangements tailored to each of these professions.

- The identification of customers and dubious transactions

Without compelling financial institutions to carry out policing activities for which they have no legal powers, they must be placed under a strict obligation to exercise vigilance with regard to the real identity of customers, the apparent economic purpose of transactions and their unusual nature and when the institution receiving or forwarding the money is located in a country with no, or only primitive, mechanisms for combating money laundering.

However, the current wording of Article 3 may pose insoluble problems for clearing systems such as Euro-Clear, Cedel and Swift. It is quite impossible for the manager of such systems to identify the persons on whose behalf operations are being carried out. The financial broker affiliated to the clearing system himself acts on behalf of customers whose identity he does not have to reveal to the clearing system. In this instance, it is clearly incumbent on the financial broker affiliated to the clearing system to meet the requirements laid down in Article 3 of the proposal for a directive.

This is all the more necessary because, given the extraordinarily high volume of securities on deposit and transactions carried out in a clearing system, it would not be feasible for such a system to determine

and keep a record of the identity of the persons on whose behalf transactions are carried out or securities or cash are held.

- Penalties

The mechanism laid down by the directive could also be strengthened if more precise penalties were imposed for financial institutions which fail to comply with the requirements. The lack of precise penalties will not only make the mechanism less effective but will also distort competition between more and less scrupulous institutions.

- Liability

The provision exempting employees or directors from civil or criminal liability if they inform the authorities in good faith of their suspicion of money laundering should be extended to cover the institution itself (legal person).

In addition, any individual suffering serious injury as a result of a false declaration made in good or bad faith should receive compensation from the state in accordance with arrangements to be laid down<sup>2</sup>.

Finally, statements made to the authorities under the terms of Article 5(1) should be used only for inquiries concerning money laundering.

- Other measures

Member States should ratify the Vienna Convention of 20 December 1988 and implement the recommendations of the Financial Action Task Force (FATF) against Money Laundering established in July 1989 at the G7 Summit in Paris<sup>3</sup>.

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<sup>2</sup> Article 6 of the bill passed by the French National Assembly stipulates that in the event of an injury resulting directly from such a statement, the state will compensate the damage suffered. Provision might also be made for the institutions covered by this directive to make contributions to a fund constituted for this same purpose.

<sup>3</sup> Report submitted to the governments in February 1990

## AMENDMENTS

Commission text

Amendments

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### Amendment No. 1

#### Thirteenth recital, fourth clause

...; whereas a special protection clause is necessary to exempt employees and directors from responsibility by breaching restrictions on disclosure of information;

...; whereas a special protection clause is necessary to exempt institutions, their employees and their directors from responsibility by breaching restrictions on disclosure of information; whereas victims of false disclosures must be compensated for the injury suffered;

### Amendment No. 2

#### Recital 13a (new)

Whereas statements made to the authorities must be used only for inquiries dealing solely with money laundering;

Amendment No. 3  
Recital 14a (new)

Whereas failure by the institutions concerned to meet the requirements laid down in this Directive must be subject to the penalties imposed by their supervisory authorities;

Amendment No. 4  
Article 3

Member States shall ensure that credit and financial institutions require identification of their customers when entering into business relations or conducting transactions, and in the case of doubt whether customers are acting on their own behalf, that these institutions take reasonable measures to establish the real identity of the persons on whose behalf a transaction is carried out or an account is opened. Credit and financial institutions shall keep records of the identity documents required until at least five years after relations with their clients have ended.

Member States shall ensure that credit and financial institutions are required to establish the identity of their customers when entering into business relations or conducting transactions, and in the case of doubt whether customers are acting on their own behalf, that these institutions take reasonable measures to establish the real identity of the persons on whose behalf a transaction is carried out or an account is opened. Credit and financial institutions shall keep records of the identity documents required until at least five years after relations with their clients have ended. Where credit and financial institutions act by order of other similar institutions and it is impossible for them, by virtue of the practices or features peculiar to the transactions to establish the identity of the persons on whose behalf the principal institutions are acting, it shall be incumbent on the latter to take reasonable measures to establish the real identity of the persons on whose behalf they are acting. Credit and financial institutions shall keep records of the identity documents required until at least five years after relations with their clients have ended.



Amendment No. 5

Article 5

Member States shall ensure:

1. That credit and financial institutions and their directors and employees cooperate fully with the relevant judicial or law enforcement authorities competent for criminal matters:

- by informing these authorities, on their own initiative, of any facts they discover which could be related to a money laundering offence;
- by furnishing these authorities with all information requested in the case of any criminal inquiry or rogatory commission on money laundering carried out according to the applicable legislation.

2. That the disclosure in good faith to the relevant judicial or law enforcement authorities competent for criminal matters by any employee or director of a credit or financial institution of any suspicion or belief that an operation is aimed at or connected to money laundering, shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve for such employees and directors any civil or penal responsibility of any kind.

Member States shall ensure:

1. Unchanged.

2. That the disclosure in good faith to the relevant judicial or law enforcement authorities competent for criminal matters by any employee or director of a credit or financial institution of any suspicion or belief that an operation is aimed at or connected to money laundering, shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, and shall not involve for such employees and directors or the institution concerned any civil or penal responsibility of any kind.

3. In the event of injury resulting from a false declaration made in good faith, the state shall compensate the victim.

4. Information passed on to the authorities pursuant to paragraph 1 may be used only in investigations relating to the serious crimes referred to in this directive.

Amendment No. 6  
Article 8

Member States shall extend the provisions of this Directive, where applicable, to professions and undertakings, other than credit and financial institutions, which because of their involvement with cash transaction business may be particularly susceptible to being used for money laundering purposes.

Member States shall extend the provisions of this Directive, adapting them where necessary to professions and undertakings, other than credit and financial institutions, which because of their involvement with cash transaction business may be particularly susceptible to being used for money laundering purposes.

## CONCLUSIONS

1. The laundering of the proceeds of crime has a decisive bearing on the spread of organized crime in general and drug trafficking in particular. The Community must therefore take all the measures required to contribute effectively to the fight against this form of crime.
2. In addition to the moral imperatives of public safety and health, Community intervention is necessitated by the fact that the liberalization of capital movements and the freedom to provide financial services could facilitate money-laundering activities.
3. Penal procedures must therefore be accompanied by a Community strategy for cooperation with financial institutions. This coordination will preclude the adoption of national measures incompatible with the completion of the internal market.
4. The mechanism set out in the proposal for a directive incorporates, for this purpose, a requirement to identify clients and to exercise vigilance as to the objective of transactions, along with arrangements for close cooperation with the judicial and law enforcement authorities.
5. However, in order to respond as effectively as possible to the recommendations made by the various international bodies concerned, this mechanism should be strengthened or clarified. In this connection:
  - the lifting of banking secrecy in connection with the serious crimes covered by this directive should be guaranteed in all Member States in accordance with standard arrangements;
  - the directive should necessarily cover all institutions, professions and undertakings whose activities include cash transactions open to exploitation by money launderers, the provisions to be adapted if necessary;
  - failures on the part of financial institutions to meet the requirement to exercise vigilance should be the subject of administrative penalties imposed by the supervisory authorities; otherwise, the introduction of the mechanism may cause distortions of competition to the benefit of less scrupulous institutions;
  - the state must compensate victims of false statements for any injury suffered;
  - statements made to the authorities under the terms of Article 5 may be used only for inquiries in connection with money laundering.
6. In more general terms, the mechanism will be effective only if the Member States:
  - ratify the Vienna Convention of 20 December 1988;
  - implement the conclusions recently arrived at by the Financial Action Task Force against Money Laundering, which advocated, in particular, the confiscation of laundered assets, centralized records, and the

development of modern and safe fund management techniques (increased use of cheques, charge cards and the automated recording of transactions involving securities).

7. The proposal for a directive should be approved subject to the preceding amendments and remarks which the Committee on Legal Affairs and Citizens' Rights is asked to take into account.